NATURAL RESOURCES DEFENSE COUNCIL

September 22, 2008

Phil Isenberg, Chair
Delta Vision Blue Ribbon Task Force
C/o California Bay-Delta Authority
650 Capitol Mall, 5th floor
Sacramento, CA 95814

RE: Comments on Delta Vision's Fourth Draft Strategic Plan

Dear Chairman Isenberg and members of the Task Force:

The Natural Resources Defense Council, on behalf of our 250,000 members and activists in California, is writing to provide comments on the fourth draft of the Delta Vision Blue Ribbon Task Force's strategic plan. We want to make three main points in our comments, which address:

- More affectively addressing ecological water and flow requirements *vis a vis* conveyance and storage recommendations;
- Agricultural water conservation; and
- Paying for environmental water and public payment for new facilities.

Additional comments on the pages that follow focus on elements of the draft strategic plan where we believe that further refinement and additional recommendations are needed to ensure that the plan achieves its goals.

Ecosystem Flow Requirements:
First, prior versions of the strategic plan and Delta Vision's 2007 report clearly emphasized that meeting California's future water needs would rely heavily, if not exclusively, on water conservation, groundwater management, and other alternative water supplies (rather than on further increases in surface water diversions, especially through the Delta). Unfortunately, this recommendation – which we strongly support – appears to have been weakened in this draft of the strategic plan. Strategy 5.1 can be interpreted (wrongly, in our estimation) to endorse all new surface and groundwater storage projects, and it could be interpreted and implemented as a strategy to further increase diversions from the Delta watershed. This concern is exacerbated by the Task Force's call for increased fall salinity in the Delta in some years, as well as by DWR's recent analysis of conveyance through an isolated facility.

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The Task Force's letter to the Governor regarding conveyance stated that it was critical to "Face up to the question of anticipated future water diversion and exports from the Delta." Strategy 3.4 addresses this question in certain respects, and the text of this draft mentions the ecological importance of flood flows. However, the strategic plan provides little in the way of criteria for evaluating storage projects and criteria for a wet period diversion system, as well as for making this critical determination on ecologically sustainable water diversions from the Delta watershed. Nor does the plan address how to ensure that the water needed for floodplain inundation in strategy 3.1 is consistent with and incorporated in the flow and water supply requirements of Strategies 3.4, 4.1-4.2, and 5.1. Perhaps most importantly, the document does not contain clear, direct overall guidance regarding total diversions.

Therefore, we recommend that the Task Force significantly revise Strategy 5.1, providing criteria for the wet period diversion system and new storage projects, akin to those provided in the letter to the Governor on conveyance, in order to ensure that this Strategy achieves the goal of restoring the delta ecosystem and improving water supply reliability. In particular, we urge the Task Force to include a clear goal calling for reduced dependence on Delta diversions and the reduction of diversions to a sustainable level.

Agricultural Water Conservation:
Second, this draft omits agricultural water conservation and efficiency in Strategies 4.1 and 4.2, unlike prior drafts of the strategic plan and the Task Force's 2007 report. While water pricing and market mechanisms are likely to improve the efficient use of water, it is important that the strategic plan set a goal for agricultural water conservation, as it does for urban water use conservation. The recent report from the Pacific Institute (*More with Less: Agricultural Water Conservation and Efficiency in California – A Special Focus on the Delta*) provides one estimate of the extent to which agricultural water use efficiency can be improved. Given the state's overwhelming use of water for agricultural purposes, we strongly encourage the task force to include a mandate for improving agricultural water use efficiency and conservation, as well as identifying some strategies, both incentives (like no interest loans, cost sharing, tax rebates, and other incentives for purchasing highly efficient irrigation systems) and consequences (such as restrictions on accessing water bonds unless implementing water conservation measures) to achieve this goal. We recommend establishing an agricultural goal of conserving 1 million acre feet per year by 2020, and identifying strategies for achieving this goal.

Paying for Environmental Water:
Third, the fourth draft of the strategic plan downplays the commitment in Delta Vision's 2007 report, and in earlier drafts of the strategic plan, of securing water for the environment through regulatory and common law mechanisms, rather than paying for water. While this statement still exists in Strategy 7.1, it should be included more prominently in volume 1. More importantly, several other strategies undermine this recommendation: adding market mechanisms to provide environmental water in Strategy 4.2; the proposed public financing of alternative conveyance in exchange for a

15% stake in that conveyance in Strategy 5.1; and public financing of storage projects in Strategy 5.1. These recommendations weaken this commitment to ensuring that the public does not pay for the water needed for environmental purposes, and they threaten the ability to ensure sufficient water for the environment. Public financing of new storage facilities is intended to be limited to alleged environmental benefits, but in the past, such public benefits frequently have failed to materialize. In many cases, such as the EWA, these public benefits turned out to be limited to mitigation for the impacts of water project operations.

NRDC has followed the development and ultimate failure of the EWA with great attention. This collapse was the result of several factors, including: undermining of the regulatory baseline upon which the EWA was designed to build; inadequate water assets; a failure to take action based on the best available science; and "mission creep" as the EWA evolved from a restoration tool to one designed solely to meet mitigation requirements and finally to a tool used block the implementation of legal requirements. Full implementation of a more traditional regulatory approach has the potential to overcome each of the obstacles. If the Task Force is considering an endorsement of the use of market mechanisms – a dramatic departure from previous drafts – we request an opportunity to participate in a panel at the next Task Force meeting regarding the collapse of the Environmental Water Account. Such a discussion would provide valuable information on an issue that the Task Force has not, to date, focused on.

Given the lessons learned from the failure of the Environmental Water Account ("EWA"), we strongly encourage the task force to revise these strategies by eliminating the use of market mechanisms to provide water, eliminating the recommendation to require the state to fund part of the conveyance in exchange for an environmental stake in this project, and strictly limiting or eliminating public financing for new storage projects.

We offer the following additional comments and recommendations.

Delta Ecosystem Restoration (Strategies 3.1 to 3.5):
We are pleased, and strongly agree, that the draft strategic plan continues to emphasize restoration of the Delta ecosystem, and its imperiled wildlife, as a necessary prerequisite to water supply reliability. (1:5, 7, 18, 24)[1] Restoring physical habitats is an important component of restoring the Delta ecosystem (Strategy 3.1), but as the plan recognizes, adequate water flows in and through the Delta are critical to the health of the ecosystem (2:8, Strategies 3.2 and 3.4).

Strategy 3.2
To date, however, strategies 3.2 and 3.4 focus on flows within the legal Delta, rather than addressing ecosystem flow conditions within the broader Delta watershed that are necessary to recover migratory and native species, particularly salmon and steelhead. The state and federal water projects, from the upstream reservoirs to the Delta pumps,

[1] In order to minimize confusion, where we refer specifically to page numbers in the fourth draft, we refer to volume: page number.

are operated as a complex system, and Delta diversions and demand for water from the state and federal projects are a leading factor in how upstream reservoirs are operated. The Task Force's letter to the Governor regarding conveyance captured this point, and it should more prominently be included in the strategic plan. Reduced carryover storage significantly limits the ability of these reservoirs to release adequate cold water flows necessary to provide spawning and rearing habitat for salmon and other anadromous species.

The strategic plan should include more focus on adequate upstream flows and temperatures, the availability of adequate upstream cold water pools and carryover storage levels, and the elimination of migratory barriers on the Sacramento, San Joaquin, and other migratory corridors, not only in the Delta, but further upstream as well. In addition, we recommend adding the following performance measure to Strategy 3.2:

- "Miles of habitat maintained with suitable water temperatures, flows, and habitat conditions for spawning and rearing and anadromous species (+)."

Strategy 3.3

With respect to Strategy 3.3(b)(1), we recommend revising this strategy to focus on the highest priority projects for screening, consistent with the recommendations and criteria of the Anadromous Fish Restoration Program, Department of Fish and Game, and U.S. Fish and Wildlife Service. This would naturally focus attention on the state and federal water projects, which are the largest diversions in the Delta, with very significant entrainment and predation problems. Utilizing a thru Delta component requires that entrainment and predation problems be addressed at the existing pumping plants in the South Delta, and we encourage the Task Force to explicitly include a strategy for reducing impacts at these facilities and modifying them to comply with DFG and USFWS criteria for fish screens. In order to more narrowly focus this recommendation on the highest priority projects, we recommend adding the following language: "Projects should be prioritized to focus on diversions greater than 100 cfs in the Delta, Sacramento, and San Joaquin Rivers, as well as on highly productive tributaries where 10% of flow is diverted. All fish screens, including screens developed for any alternative conveyance project, shall comply with the fish screening criteria of the Department of Fish and Game and U.S. Fish and Wildlife Service."

Strategy 3.4

It is important that greater attention be paid to fall run Chinook salmon in the strategic plan. Measures to protect other salmon runs may not provide sufficient protections for fall run salmon, which have become the backbone of the state's sport and commercial salmon fisheries, but which are not protected under the state and federal Endangered Species Acts and thus not explicitly managed for in the OCAP process. State and federal law both require the CVP and SWP to be operated to double wild salmon populations from historic levels. We therefore recommend adding the following performance measure, to reflect the importance of restoring the Delta and operating the state and federal water projects to meet the existing state and federal salmon doubling

goals found in section 3406(b)(1) of the Central Valley Project Improvement Act, the Bay Delta Water Quality Control Plan, and section 6902(a) of the Fish and Game Code:

- "Population of wild, fall run Chinook salmon (percentage of achievement of the state and federal "doubling goal") (+)."

Second, as noted elsewhere in this letter, we are concerned that the recommendation to shift water project operations to a wet period diversion system, and the recommendations for new storage and conveyance projects, could create pressure to increase diversions from the Delta watershed, causing significant harm to fish and wildlife. While the recommended SWRCB proceedings address some of the critical elements of the flow requirements for fish and wildlife, they do not do so in a comprehensive manner. In order to ensure that project operations meet the goal of Strategy 3.4, including any new facilities, we recommend adding the following elements to strategy 3.4:

- "The SWRCB should initiate a proceeding to determine whether the Sacramento – San Joaquin Delta ecosystem is a "Fully Appropriated System," pursuant to section 1205 et seq. of the California Water Code."
- "The SWRCB should initiate a proceeding to revise the water rights permits for the CVP and SWP, in order to ensure that project operations comply with the requirements of the revised Bay Delta Water Quality Control Plan, including the environmental flow conditions needed to achieve the narrative salmon doubling requirement of that plan, and achieve flow conditions necessary to protect fish and wildlife in the Delta and upstream."

Strategy 3.5

The water quality recommendations in the draft plan must reflect the fact that existing regulatory measures are inadequate to meet water quality standards in the Delta, as noted in the text of the plan (2:27) and as demonstrated by results of water quality monitoring in the Delta. Relocating intakes can address water quality for human uses, but fails to address ecosystem needs; much greater attention must be paid to controlling sources of pollution in order to adequately address ecosystem needs as well as human uses. We are encouraged by the list of performance measures in Strategy 3.5, but are concerned whether the proposed strategies can achieve these goals.

Recently, the National Marine Fisheries Service issued a draft biological opinion finding that several commonly used pesticides are jeopardizing salmon and steelhead populations in the Bay-Delta. (The draft biological opinion is available online at http://www.nmfs.noaa.gov/pr/pdfs/pesticide_biological_opinion_draft.pdf). Likewise, prior studies have found that delta smelt were exposed to pesticides in the Delta at levels which may have lethal or sublethal effects. (*See* Kuivila and Moon, "Potential Exposure of Larval and Juvenile Delta Smelt to Dissolved Pesticides in the Sacramento-San Joaquin Delta, California," in Feyrer, F., Brown, L.R., and Orsi, J.J., eds., Early Life History of Fishes in the San Francisco Estuary and Watershed (AFS Symposium 39): Bethesda, Maryland, American Fisheries Society, p. 229-241). More attention to

improving water quality in the Bay Delta is important for many native fish species, and has important benefits for drinking water quality as well. As one example, expanded use of highly efficient irrigation systems (including through financial incentives like no interest loans) can reduce agricultural water use while also reducing contaminated runoff. Ensuring that there are sufficient resources to implement TMDLs and other water quality control regulations is a critical need.

Meeting California's Water Supply Needs (Strategies 4.1 and 4.2)
We commend the Task Force for continuing to strongly advocate for water conservation, development of other alternative water supplies, and regional self sufficiency, as the keys to sustaining water supply reliability in the future. However, we are concerned that several changes to these strategies since the last draft have undermined these goals. We also offer several additional suggestions to strengthen these specific strategies. Our second recommendation (regarding agricultural water conservation, on pages one to two of this letter) addresses these strategies.

We are very encouraged that the strategic plan strengthens the recommendations for increased water recycling, desalination (especially of brackish water), and capture of urban runoff and improved stormwater management. (2:34) Developing these alternative water sources is likely to yield far more water than has ever been exported from the Delta, at a far lower cost and with far fewer environmental consequences. As the text notes, these types of supplies are far more reliable than surface water diversions. (1:21) Likewise the recommendation for encouraging low-water use landscaping could yield substantial water supply benefits if widely adopted. (2:35)

However, with respect to increased groundwater banking and conjunctive use (2:35), we believe that the strategic plan should include recommended safeguards to prevent overdrafting of groundwater basins, including requirements for hydrologic studies to determine effects of increased groundwater withdrawals on groundwater levels, other groundwater users, and nearby surface waters, as well as ongoing groundwater monitoring. While conjunctive use programs can and should be part of the solution to California's water supply needs, we should make sure that this recommendation does not result in merely shifting unsustainable levels of water demand to groundwater aquifers from surface waters, rather than addressing the problem head on.

In addition, we encourage the strategic plan to include groundwater remediation as a specific recommendation in strategy 4.1 or 4.2. Contaminated aquifers pose a significant problem, leading many communities to rely on contaminated drinking water that fails to meet state and federal standards, as well as restricting the ability to develop conjunctive use programs. To the extent that responsible parties can be identified, they should pay to cleanup groundwater basins, but the State should play a significant role in this effort, particularly in light of our duty to protect the state's most vulnerable citizens.

These recommendations should be included in a broader discussion of the need for California to develop a comprehensive groundwater management program. California is one of only two Western states that do not have a comprehensive state-wide

groundwater management system. We believe that the Task Force's vision for the Delta should include a clear call for an effective groundwater management program.

We strongly encourage the strategic plan to focus primarily, if not exclusively, on development of alternative water supplies (e.g., water conservation and efficiency, improved stormwater capture and management and low impact design, and water recycling) to meet California's water supply needs. In prior drafts, this focus was demonstrated by including these recommendations as the first and second strategies in the plan. Although this draft of the strategic plan continues to emphasize development of alternative water supplies, we are concerned that strategy 5.1 could be interpreted (improperly, in our view) to recommend substantial increases in exports from the Delta, and could result in huge public investments in new storage projects that yield fewer benefits than these water supply alternatives. Specifically, we recommend that the Task Force include a "loading order," designed after the successful loading order policy adopted by California PUC. Such a loading order should encourage investments in conservation first. Second, investments should be focused on wastewater recycling, groundwater clean-up, low impact development and other tools that do not increase Delta diversions. Only once these tools have been maximized, should water agencies consider options that could increase diversions from the Delta. Such a loading order has proven to be effective in promoting efficiency in energy policy. It has the potential, we believe, to assist in moving toward sustainable management of the Delta.

New Conveyance and Storage (Strategy 5.1)
As discussed above, new conveyance and storage facilities should not be expected to result in substantially increased exports from the Delta, despite DWR's conclusion in its recent analysis of water exports through a peripheral canal. The strategic plan should make this explicit, and should explicitly call for reduction of diversions to an ecologically sustainable level.

Equally important, any decisions on public investments in new surface storage facilities must be the result of rigorous analysis of the environmental and socio-economic costs and benefits of such facilities. The current draft suggests that decisions be made by a definite timeline of 2010 (2:38), rather than making these decisions after the completion of CALFED surface storage investigations and other environmental analysis (2:39). We strongly encourage the Task Force to develop criteria to inform decisions on storage facilities, similar to the Task Force's letter on analysis of conveyance alternatives, and to include such criteria in this recommendation. Indeed, there is a growing recognition in the business community that investments in new surface storage will not be cost effective and would not yield substantial water supply benefits, particularly for urban communities. *See* letter from the Southern California Leadership Council to Delta Vision dated August 4, 2008.

Likewise, we have significant concerns regarding public funding for new storage projects, particularly to the extent that these projects mitigate existing impacts of the state and federal projects or the impacts of the new facilities themselves. (2:39) We encourage the Task Force to eliminate or strictly limit public financing for these storage

projects, to ensure that projects are truly cost-effective and that beneficiaries pay for the projects and their mitigation.

With respect to surface storage projects in particular, we recommend that the strategic plan exclude raising Shasta Dam, given the significant environmental justice concerns that this project gives rise to, and the fact that raising the dam would violate State law. And with respect to new conveyance, we strongly urge the task force to recommend that any new conveyance canal be lined or a pipeline, in order to ensure that the canal is protected from seismic risks, as well as reducing losses of water through seepage.

As we and others have noted, the shift to a wet period diversion system could provide increased water supply reliability and ecosystem benefits, if the benefits of some level of flood flows are protected from capture and diversion, and the resulting managed hydrograph more closely resembles a natural hydrograph. Thus, we recommend that the discussion of Strategy 5.1 be revised to include more explicit criteria to ensure that the ecological benefits of flood flows are protected from capture and diversion (as mentioned in the strategic plan at 1:22 and in Strategy 3.4).

Flood Management (Strategy 5.2)
We recommend revising this section to more clearly identify the environmental benefits of floodplain restoration, revising the title of the strategy to read, "Integrate Central Valley flood management with water supply planning and environmental restoration." Similarly, we recommend that this strategy revised to include floodplain restoration for environmental benefits. While this is discussed to some degree in Strategy 3.1, restoration of active floodplains for environmental benefits to salmon and other species should be more explicitly linked to the Central Valley Flood Protection Plan and DWR's FloodSafe Program. Ideally, investments in floodplain restoration can yield benefits to ecosystems, flood control, and water supply. However, even where floodplain restoration may not significantly improve flood control or water supply benefits, the environmental benefits of floodplain restoration projects should be explicitly considered in these existing programs.

Governance (Strategies 7.1 and 7.2)
We intend to provide comments on these sections of the strategic plan in subsequent correspondence.

Financing (Strategy 7.3):
We commend the Task Force for addressing the question of financing head on. Implementation of the plan requires the funding to carry it out, and the failure to provide sustainable funding has led prior efforts astray. The strategic plan identifies a broad range of potential funding sources, and the use of fees on diversions and transfers within the Delta watershed should provide a significant proportion of the revenue needed to implement the plan.

In addition, we support the principle of not paying for environmental water, but as noted elsewhere, several recommendations in the strategic plan undermine this policy

(particularly the market approaches to water in Strategy 4.1, and the public financing for new storage projects and for 15% of a canal capacity in Strategy 5.1), and this principle could be more prominently included in Volume 1.

Finally, in addition to the criteria for public funding listed in Principle 6 on page 66, we encourage the Task Force to recommend that state funding (including bond financing) for private activities be limited to entities that are implementing water conservation measures and making progress towards their water conservation goals.

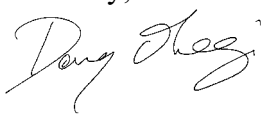
Phasing and Implementation of the Strategic Plan:
We appreciate the identification of several near term actions for implementation (32), and recognize that many of the recommendations in the report include near term actions and deadlines, the third draft of the strategic plan identified a table to guide phased implementation of the plan (although that table was not yet developed). As this section is filled out, we recommend that the Task Force include the near-term actions developed jointly by NRDC and the Westlands Water District (These have been previously submitted to the Task Force).

Given the 10-20 year time frame likely to be necessary for any major infrastructure changes in the Delta, during the next several decades it is critically important that the State focus on expanding alternative water supply sources and improving water use efficiency and conservation (strategies 4.1 and 4.2). Developing a phased implementation plan is important in determining the actions to be taken in the coming decades, while the conveyance and storage recommendations of the plan are being evaluated and implemented. In addition, in light of the very significant costs associated with the plan, including a phasing plan could help ensure that the highest priority projects are implemented first.

We continue to recommend, per our July 2007 comments, that the Task Force adopt a comprehensive approach to phased analysis and decision-making. We believe that this approach has the potential to facilitate superior decision-making and to reduce the controversy associated with major decisions, such as conveyance and storage.

Thank you for consideration of our views. We greatly appreciate the opportunity to comment on the strategic plan, and look forward to working with you as you finalize the plan in the coming weeks. Please feel free to contact us at your convenience if you have any questions or would like to discuss these recommendations further.

Sincerely,



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